

STATE OF MICHIGAN
COURT OF APPEALS

THOMAS BERNARD BERCH,

Plaintiff-Appellee,

v

SECRETARY OF STATE,

Defendant-Appellant.

UNPUBLISHED

April 23, 1999

No. 204230

Luce Circuit Court

LC No. 97-002523 AL

Before: O'Connell, P.J., and Jansen and Collins, JJ.

PER CURIAM.

Defendant appeals by leave granted the circuit court's order setting aside the hearing officer's affirmance of the revocation of plaintiff's driver's license. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff accumulated four alcohol related driving convictions between 1986 and 1994, with the last conviction occurring on August 4, 1994. On April 12, 1995 defendant administratively revoked plaintiff's driver's license pursuant to MCL 257.303(2); MSA 9.2003(2). Subsequently, plaintiff filed a petition for reinstatement of his license. At the hearing, plaintiff submitted a substance abuse evaluation which indicated that he was alcohol dependent, but that his prognosis was considered good if he followed the recommendation that he attend Alcoholics Anonymous (AA) meetings and obtain a sponsor. In addition, plaintiff submitted testimonial letters from several persons indicating that he had not consumed alcohol since June, 1994. Plaintiff testified that while he did not attend AA meetings, he was involved in a support group known as Drivers Against Drunk Driving (DADD).

The hearing officer denied plaintiff's petition. The hearing officer found that plaintiff was an alcoholic, but did not yet accept that fact. The evidence showed that plaintiff was not in sustained remission, and was not in compliance with treatment recommendations. The hearing officer concluded that plaintiff had not presented the clear and convincing evidence required by 1992 AACCS, R 257.313 (Rule 13) to rebut the statutory presumption, found at MCL 257.303(1); MSA 9.2003(1), that he was an habitual violator of the laws pertaining to operating a vehicle under the influence of alcohol.

The circuit court set aside the hearing officer's decision on the grounds that it was arbitrary and capricious. The circuit court found that the hearing officer determined that attendance at AA meetings was the only appropriate method of treating an alcohol problem. The hearing officer refused to recognize that plaintiff was taking other steps to control his problem, such as attending the DADD support group. The court restored full driving privileges.

When reviewing a lower court's review of an agency action, we determine whether the lower court applied correct legal principles and whether it misapprehended or grossly misapplied the substantial evidence test to the agency's factual findings. The latter standard is indistinguishable from the clearly erroneous standard of review. *Boyd v Civil Service Comm*, 220 Mich App 226, 234-235; 559 NW2d 342 (1996).

A circuit court has only limited power to review a decision resulting in a denial or revocation of a license. Defendant's decision can be set aside only if the circuit court finds that at least one of the statutory criteria is satisfied, including that the decision was arbitrary, capricious, or an abuse of discretion. MCL 257.323(6)(e); MSA 9.2023(6)(e).

The circuit court concluded that the hearing officer's decision was arbitrary and capricious. We disagree and reverse. The circuit court misapplied the arbitrary and capricious standard. The evidence presented to the hearing officer demonstrated that plaintiff had been found to be alcohol dependent. Plaintiff had abstained from the consumption of alcohol for more than two years; however, the evaluation indicated that long-term sobriety was unlikely without participation in a recovery program. Plaintiff declined to participate in AA, a program with an established record of success and the program recommended for him, and instead chose to participate in DADD, a newly-created program with no track record. Contrary to the circuit court's finding, the hearing referee did not conclude that participation in AA meetings was the only method by which an alcoholic could bring a drinking problem under control. Under the facts of this case, the efficacy of AA versus that of DADD was the issue presented to the hearing referee. The hearing referee's decision that plaintiff had not rebutted the statutory presumption because he had not demonstrated that his alcoholism had been brought under control by participation in an established recovery program was not arbitrary and capricious.

A hearing referee's decision should be affirmed if it is supported by the requisite evidence, even if the reviewing court might have reached a different result. *Kester v Secretary of State*, 152 Mich App 329, 335; 393 NW2d 623 (1986). The hearing officer's decision was supported by substantial evidence. The circuit court clearly erred by setting aside that decision. *Boyd, supra*.

Reversed. We do not retain jurisdiction.

/s/ Peter D. O'Connell

/s/ Kathleen Jansen

/s/ Jeffrey G. Collins